IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3022, 3023, 3024 & 3357 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of
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5. Whether it is to be circulated to the Civil Judge? : NO

VITHALBHAI HANSRAJBHAI RADADIA

Versus

A V VADHAR

Appearance:

SCA Nos.3022, 3023 & 3024/2000:

MR ND NAVAVATI SR. ADVOCATE, WITH MR TUSHAR MEHTA for Petitioner
MR ARUN D OZA For Respondent No. 1 & 3.
MR JAYANT PATEL for Respondent No. 2

SCA No.3357 of 2000:

MR P.M.THAKKAR, SR. ADVOCATE, WITH MR TUSHAR MEHTA
for the petitioner
MR ARUN D OZA for respondent Nos.1 & 2

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 26/04/2000

ORAL JUDGEMENT

Rule, service of which is waived by learned advocate Mr Arun D.Oza for respondent Nos.1 & 2 in Special Civil Application No.3357 of 2000 and for respondents Nos.1 & 3 in other matters and learned advocate Mr Jayant Patel for respondent No.2 in Special Civil Application Nos.3022 to 3024 of 2000.

Since this group of four petitions, pertaining to election dispute, under Article 226 of the Constitution of India, raise common questions and also having nexus with the common election programme and the facts are interconnected, upon request, they are being disposed of, by this common judgment.

With a view to consider and adjudicate upon the merits of the petitions and the challenge against them, a short spectrum of facts, giving birth to this group of four petitions, may be highlighted, at the out outset.

It would be material and interesting to mention, first, that this group of four petitions and a group of other 20 petitions were heard on the same day, since they are pertaining to election dispute of the election of Managing Committee of one specified Co-operative Society, like that, Shree Rajkot District Cooperative Bank Ltd ("Bank" for short), and the persons who have raised the dispute in all the groups are either the affiliated cooperative societies or their delegates or office bearers. A group of 20 such writ petitions pertaining to inclusion and exclusion of the names of affiliated societies, have been disposed of by common judgment today, in which, detailed factual and legal aspects have been articulated. It would be, therefore, unnecessary to reiterate the same factual and legal aspects, once again, in this common judgment, as rightly, jointly, stated by the learned advocates appearing for the parties.

With this miner diversion from the main track, a few relevant and material aspects which are common in this group of four petitions need to be highlighted, herein, as under:

Shree Rajkot District Co-operative Bank Limited is a specified Co-operative Society within the meaning of section 74C of the Gujarat Co-operative Societies Act, 1961 (1961 Act, for short). Election of the Managing

Committee (Board of Directors) is required to be conducted in accordance with the provisions contained in Chapter XI-A of the 1961 Act read with the Gujarat Co-operative Societies Rules 1965 (1965 Rules) and the Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982 (1982 Rules).

The constitution of the Managing Committee (Board of Directors) of the Bank is provided for in Bye-law No.30(1) of the Bye-laws of the Bank and 17 directors are required to be elected pursuant to the said Bye-laws. The composition of directors are as follows:

13 Directors Constituency of Agricultural and Multi Purpose Co-operative Society.

2 Directors Constituency of of Non-Agricultural Credit and other Cooperative Societies.

1 Director Constituency of Marketing and Processing Co-operative Societies.

1 Director Constituency of Co-operative Societies not falling in the above referred three Constituencies (known as Itar Mandali Constituency).

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17 Directors.

SPECIAL CIVIL APPLICATION NO.3022 OF 2000:

The petitioner, in this petition, under Article 226 of the Constitution, has questioned the rejection of his Nomination Form for the election of Managing Committee of the Bank, by virtue of an order of the respondent Returning Officer, on 12.4.2000. He has, also, alleged political malafide in rejecting his nomination.

The respondent, Returning Officer, in his affidavit in reply, has, not only, specifically, denied the allegation of political malafide, but has, evidently, stated that the rejection of nomination form is, strictly, in terms of the Rules and Bye-Laws as the petitioner has been found responsible for the misuse of fund of the Society pursuant to the inquiry proceedings under section 93 of the 1961 Act. It may be mentioned that it is not in dispute that a notice was issued under section 93 of the 1961 Act, by the District Registrar of the Co-operative Societies for the misuse of funds of the Society and pursuant to the said notice, the petitioner had paid the

amount stated in the notice with interest. Thus, the amount in respect of which, there was misuse of funds came to be repaid and credited in the office of the Society with interest. The Registrar of the Co-operative Societies, passed order dropping the recovery proceedings. However, the District Registrar has not dropped the proceedings so far as the misuse of fund is concerned, because it has already been admitted by the petitioner that there was misuse or irregularity in respect of the amount of Rs.10,000/-. The petitioner, has, therefore, incurred disqualification, as a result of which, the nomination form of the petitioner, a delegate of the society for the election of the Managing Committee, scheduled to be held tomorrow, came to be rejected.

The dispute revolves around as to whether the payment of amount in respect of which notice under section 93 of the 1961 Act came to be issued and, subsequently, repayment with interest came to be made with the society and the Registrar of the Society dropped the proceedings under section 93 of the 1961 Act, as there was admission of delinquency, and the District Registrar of the Co-operative concerned has yet not finalised the proceedings, could be said to be a disqualification entailing rejection of nomination form. In other words, whether for a particular period, an affiliated society of which the petitioner is a delegate for the election of the Managing Committee of the Bank could be said to be a defaulter, at the relevant time under bye-law 26(4), is a question which is sought to be raised and adjudicated upon in this petition under Article 226 of the Constitution of India. There are many other disputed questions also.

SPECIAL CIVIL APPLICATION NO.3023 OF 2000:

The petitioner, by filing this petition under Article 226 has challenged the order dated 12th April, 2000 passed by the respondent No.1, Election Officer, whereby, the nomination form for the election of Managing Committee of the Bank from the constituency of Agricultural and Multipurpose Co-operative Societies came to be rejected upon objection raised by the respondent No.2. The objection raised by the respondent No.2, which is upheld by the respondent No.1, Election Officer, is pertaining to failure to produce the authenticated resolution of the Society. Respondent No.2 had raised the contention that the copy of the resolution given, not only, was not authenticated, but was forged and fabricated. The objector has, specifically, raised the objection that

there was no such resolution passed in the meeting of the Committee authorising the petitioner to contest the election and no proceedings had been entered in the minutes book of the society and that the petitioner has misused the letter-pad and rubber stamp of the Society for creating false resolution.

The Returning Officer had, however, called upon the petitioner by giving an opportunity of hearing to remain present with original minute book and also Agenda Book with old and new proceedings. It is clear from the affidavit of respondent No.1, Returning Officer that the petitioner failed to produce those documents at the time of hearing. That is how, the nomination form of the petitioner came to be rejected.

It is very clear from the facts and circumstances that there are serious disputed questions of facts requiring investigation of facts.

SPECIAL CIVIL APPLICATION NO.3024 OF 2000:

Virtually, the facts of this petition are, almost, identical to the facts of Special Civil Application No.3022 of 2000, narrated hereinbefore. This is also a petition in which the rejection of nomination form is challenged invoking the aids of Article 226 of the Constitution of India. The challenge is against the order dated 12.4.2000 by the respondent No.1, Election Officer, whereby, the nomination form of the petitioner for election to the Managing Committee of the Bank from the constituency of Agricultural and Multipurpose Cooperative Societies came to be rejected, upon objection raised by the respondent No.2.

The rejection of nomination form by the respondent No.1, Election Officer, is challenged in this petition by the petitioner, inter alia, contending that it is unjust, unreasonable, illegal and actuated by political malafides. As per the affidavit filed by the respondent No.1, Election Officer, election programme was scheduled and published for the election of the Managing Committee of the Bank and the petitioner had filed nomination form from the Agriculturist Constituency on April 10, 2000 as well as from the constituency of Marketing and Processing. On the day of scrutiny of the nominations, the respondent No.2 objected to the nomination filed by the petitioner for the Agriculturist Constituency on the ground that the concerned society had donated Rs.10,000/for advertisement in a Souvenir published by one institution and as per the audit report that amount

was unauthorisedly used or misused. Therefore, the District Registrar had issued notice under section 93 of the 1961 Act and, therefore, the petitioner has incurred disqualification. After considering the objections and submissions, the respondent No.2 rejected the nomination form. The payment of Rs.10,000/- by way of donation to the institution from the society is admitted, but the contention raised on behalf of the petitioner is to the effect that the said amount along with the amount of interest specified in the notice issued against him pursuant to the provisions of section 93 of the 1961 Act is, fully, paid and deposited with the Society and, thereafter, the proceedings has been dropped by the Registrar of the Co-operative Societies and therefore, there would not arise any question of disqualification. It was, therefore, contended that the rejection of nomination form on the ground of misuse of funds and resultant disqualification is illegal, unjust and malafide. Therefore, the question whether the amount paid by the concerned society to one institution by way of donation, which was not authorised, upon repayment with interest and dropping of proceedings under section 93 by the Registrar of the Co-operative Societies and not by Registrar of District Co-operative Societies, would constitute disqualification under bye-law 26(4) of the Bye-laws of the Bank would constitute an impediment in contesting the election, is a serious question to be decided as it is hotly, debated. The political malafide alleged by the petitioner came to be, seriously, controverted. It is not disputed that the petitioner who is a delegate of the society and also the President of the Society is also the President of the Institution to which donation came to be given. The funds of the society in which the petitioner is the President had been given by way of donation to another institution in which he is holding the office of the President.

SPECIAL CIVIL APPLICATION NO.3357 OF 2000:

In this petition under Article 226 of the Constitution, the petitioner has challenged the withdrawal of his nomination form for the election of Managing Committee of the said Bank on various grounds, including, political malafide. According to the contention of the petitioner, he had, as such, never withdrawn his nomination form. Some member of the opposition had, wrongly, withdrawn his nomination form and it was permitted to be withdrawn by the respondent No.1. On behalf of the respondent, affidavit in reply is filed. The Election Officer, in his affidavit has, categorically, stated that the petitioner had filed two nomination forms for one

constituency only, i.e. Agriculture and Multi-purpose constituency. Upon scrutiny of the nomination forms, it was noticed to be valid and therefore while declaring the list of valid nominations, his name was also included in the list of valid nominations received. It is also stated that it would mean that if a candidate has filed more than one nominations for his candidature for the same constituency, his name shall be included only once in that constituency. Candidates may file more than one nomination form for the same constituency but that does not mean that the candidature is permitted more than one seat in the constituency. A delegate can contest election only on one seat.

The nominations filed by the petitioners are also produced on record by the Election Officer. Both the nominations were for agricultural and multi-purpose society constituency only. It is, clearly, stated by the Election Officer, in his affidavit in reply, that the petitioner had, in person, submitted the withdrawal form in the prescribed form and as per the Election Programme already notified, the nominations were permitted to be withdrawn before the stipulated time on the last date fixed for withdrawal of candidature under Rule 16 of the Rules of 1982. The last date for withdrawal of candidature was 17.4.2000. The Election Officer has also stated, in his affidavit in reply that the prescribed form for withdrawal was signed by the candidate and was also presented by him in person to the Assistant Returning Officer. The receipt was also passed for withdrawal of the form to the candidate at the very moment when the withdrawal form was received.

The Election Officer has, further, stated, in his affidavit in reply, that the petitioner along with his supporters had gone to his office and, as such, had compelled him to show the original withdrawal form submitted by the petitioner. As a result of which, acceding to the request, original nomination form was, reluctantly, shown. Firstly, the Election Officer has shown the xerox copy of the withdrawal form, but it was refused by the petitioner and his supporters and insisted upon showing the original form, which request was also acceded by the Election Officer. Moreover, the Election Officer, has, clearly, stated that when the original withdrawal form was shown, reluctantly, to the petitioner upon serious insistence, the candidate himself snatched away the form from the Election Officer and, as such, tore it off and threw away the same through the window. Since it amounted to act of offence punishable under section 186, 204, 477 and 114 of the Indian Penal Code,

the Election Officer, as Returning Officer, lodged a complaint in Pradhyuman Nagar Police Station of the city of Rajkot, which came to be registered as C.R.No.I-223 of 2000., a copy, whereof, is also placed on record. It is also stated by the respondent No.1, Election Officer that the petitioner had filed two nomination forms as a delegate of two different societies, but in respect of one constituency. It is also, further, averred by the Returning Officer that if a candidate files more than one nomination form for one constituency only, on the withdrawal form being signed by the candidate for the said constituency would be treated as withdrawn even if he has filed more than one nomination form for one constituency only, because that would be the withdrawal of the candidature and not the nomination form, since nomination forms were filed for the same constituency. The allegations of political malafide is also traversed and controverted by the Election Officer.

Upon close examination of the facts and the rival submissions made by both the sides and also considering the case law on which reliance was placed by both the sides during the course of hearing of this group, along with other group of petitions, this Court does not deem it expedient and necessary to reiterate the same proposition, in this judgment and therefore, it was, rightly, stated that the same may not be reiterated, as all the matters were heard together and in the first group of petitions, detailed factual matrix and elaborate legal proposition, came to be articulated. So is the position, in so far as the preliminary objection raised on behalf of one of the respondents through his counsel Mr Jayant Patel. After hearing both the sides and after even having received the benefits of the views and opinion of the learned Advocate General, who was invited to offer his views, the preliminary objection came to be rejected by this Court, in first group of petitions, and therefore, obviously, and rightly it was not insisted to be reiterated in the second group of petitions as that would be an avoidable repetition.

Judicial review and the jurisdictional sweep of the provisions of Article 226 of the Constitution of India are very well expounded and extensively, explored by catena of judicial pronouncements. However, insofar as this group of petitions are concerned, it was, vehemently and seriously, contended that this group of petitions should not be entertained as efficacious alternative remedy is provided in 1961 Act itself under the provisions of section 145U of the 1961 Act.

It would be expedient, at this stage, to refer to the provisions of section 145-U of the 1961 Act, which reads as under:

"145U. Dispute relating to elections to be submitted to the Tribunal -- (1) Notwithstanding anything contained in section 96 or any other provisions of this Act, any dispute relating to an election shall be referred to the Tribunal.

(2) Such reference may be made by an aggrieved party by presenting an election petition to the Tribunal.

Provided that no such petition shall be made till after the final result of the election is declared and where any such petition is made it shall not be admitted by the Tribunal unless it is made within two months from the date of such declaration:

Provided further that, the Tribunal may admit any petition after the expiry of that period, if the petitioner satisfies the Tribunal that he had sufficient cause for not preferring the petition within the said period:

(3) In exercising the functions conferred on it by or under this Chapter, the Tribunal shall have the same powers as are vested in a Court in respect of --

(a) proof of facts by affidavit;

(b) summoning and enforcing the attendance of any person and examining him on oath;

(c) compelling discovery or the production of documents, and

(d) issuing commissions for the examination of witness.

In the case of any such affidavit, an officer appointed by the Tribunal in this behalf may administer the oath to the deponent,

(4) Subject to any regulation made by the Tribunal in this behalf, any such petition shall be heard and disposed of by the Tribunal as expeditiously as possible. An order made by the

> Tribunal on such petition shall be final and conclusive and shall not be called in question in any Court."

The second opposition to the adjudication of this group of petitions by this Court under Article 226 of the Constitution is that there are disputed questions of facts and therefore even if, the case of the petitioners in this group of petitions is held to be falling in one of the exceptions culled out by this Court, then also, this Court should raise its hands, as disputed questions of facts are involved in this group of matters which would require investigation of facts.

The aforesaid submissions are controverted and challenged by the learned advocates appearing for the petitioners. After having given anxious consideration to the peculiar facts and special circumstances obtaining in this group of petitions and the relevant proposition of law which is highlighted, in first group of such petitions, and the underlying purpose and design of the provisions of section 145U of the 1961 Act, unlike in the first group of petitions, in this group of petitions, the demand and command of interest of justice is to relegate the petitioners to the statutory alternative efficacious remedy, once elections are over tomorrow. It is clarified that the discussions and observations of facts made hereinbefore are at, prima facie, level and, obviously, shall not constitute an impediment or obstacle in determining and deciding any such dispute, if raised before the Election Tribunal or in any other competent forum. Since this Court is satisfied that the petitioners are required to be relegated to the alternative efficacious statutory remedy, after elections are over, without examining the merits of the rival versions, these petitions are required to be rejected, leaving the parties to pursue appropriate alternative, statutory remedy, if so desired.

In the result, this group of four petitions are rejected only on the ground of availability of alternative efficacious statutory remedy and that disputed questions of facts are involved. Rule discharged with no order as to costs.

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(vjn)